



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

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WATER

IN THE MATTER OF THE PETITION OF APPLIED)
WASTEWATER MANAGEMENT INC., FOR)
APPROVAL OF A MUNICIPAL CONSENT)
GRANTED BY THE TOWNSHIP OF MOUNT)
OLIVE, MORRIS COUNTY; AND EXTENSION OF)
ITS EXISTING WATER TARIFF TO THE NEW)
SERVICE AREA)

ORDER

DOCKET NO. WE09030185

(SERVICE LIST ATTACHED)

BY THE BOARD:

Applied Wastewater Management, Inc. ("AWWM" or "Company") currently provides water and/or wastewater service to approximately 4,100 customers in communities located in Bergen, Warren, Hunterdon, Morris, Burlington, Monmouth, Cape May, and Somerset Counties, New Jersey. AWWM is a subsidiary of American Water Works Company, a large investor-owned water and wastewater corporation providing regulated and unregulated utility services nationwide.

On August 19, 2008, the Township of Mount Olive ("Township") governing body adopted Ordinance No.42-2008 ("Ordinance"), which granted AWWM authority to own, operate and maintain a public water supply system and provide public fire protection within portions of the Township known as Morris Chase and Morris Hunt (collectively the "Development"). On March 5, 2009, Applied Wastewater Management, Inc. filed a petition with the Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5, for approval of this municipal consent granted by the Township of Mount Olive. In its petition, the Company also requests the Board's approval to apply the Company's existing water tariff to the new service area and, as part of its petition, requests approval of its use for service charges.

On June 11, 2009, a duly noticed public hearing on the Company's petition was held at the Board's Newark office. Legal Specialist, Joseph Quirolo, Esq., presided over the hearing at which representatives of the Company, the Department of Public Advocate, Division of Rate Counsel ("Rate Counsel") and Board Staff appeared.

The municipal consent authorizes AWWM to provide water service to the Development, a residential community located within Block 4400, Lots 79, 86 and 108, on the Township tax map. The Development is a residential community proposed to consist of 359 residential dwellings, a recreational facility, and a wastewater facility. Of the 359 residential dwellings, Morris Chase will be comprised of 105 single family homes, 78-2 bedroom townhouses, and 93-3 bedroom townhouses; and Morris Hunt will be comprised of 83 single family homes. The Development remains a work in progress with only twenty-three units constructed at Morris Hunt and sixteen constructed at Morris Chase as of June 11, 2009. Presently, of the twenty-three Morris Hunt units, twenty-two are occupied and of the sixteen Morris Chase units, none are occupied. The Company estimates full occupancy by 2017.

According to the Ordinance, the Township granted AWWM a revocable franchise, meaning that the Company is authorized to operate the water system until such time as the Township elects, at its discretion, and after notice to the Company, to acquire the water system. The transfer of the water system to the Township will be at no cost to the Township, either for the water system or for any proceeding before the Board that AWWM will need to complete prior to it ending service to its customers. The transfer will also impose no obligation on the Township to assume any obligation the Company may have incurred in the provision of utility service. The transfer of the water system and all related assets to the Township will take place one year after written notice is received by AWWM.

Mount Olive presently owns and operates a public water system that serves approximately 2,500 Township residents; a lack of additional capacity prevents the Township from servicing the Development. New Jersey American Water Company operates a water system nearby but also lacks sufficient capacity to serve the Development.

The water system is new construction, needs no capital improvements, and is ready to be placed into service. The system was designed and built by Applied Waste Management ("AWM") an affiliate of AWWM after the Developer, Toll Brothers, Inc., received the necessary authorization from the Township in July 2002. Subsequent to the construction of the water system, a Purchase Agreement was executed in January 2009 between AWWM and Toll Brothers, whereby the Company agreed to buy the water system from Toll Brothers for the purchase price of one dollar. The water system will be conveyed to AWWM within thirty (30) days of the last of the following to occur: (i) final payment by the Developer to AWM of all amounts for the design and building of the system, (ii) issuance of the Permit to Operate the Water Supply System by the New Jersey Department of Environmental Protection, and (iii) issuance of a Final Order by the Board approving the Company's Petition for approval of its municipal consent. In the event that all of the service connections to the homes in the Development are not installed by the time of the conveyance of the water system, AWWM and the Developer agree that these will be conveyed upon installation.

There will be no impact on the Company's ability to provide safe, adequate and reliable service to the other areas served by the Northern Region. The new customers will have customer assistance through the Northern Region office, including a 24 hour emergency line. AWM (through its management agreement with AWWM) will provide daily on-site visits by a Licensed Operator to operate/supervise system operations. The Licensed Operator's responsibilities include other nearby systems. Back-up operators will be available as needed.

AWWM will operate the water system on a standalone basis. Plant capacity is 328,320 gallons per day (gpd). Upon full build-out and occupancy, the Company estimates an average daily

demand of 105,885 gpd. Peak daily demand is estimated at 317,655 gpd, or three times the average daily demand.

The Company will apply its current General Metered Service water tariff to provide water service to the Development. As a residence is completed and occupied, the homeowner will be responsible for water service costs. AWWM and the Developer acknowledged that until the Development is built out to more than 309 service connections, current revenues from the Development will be insufficient to cover the Company's operation and maintenance costs. Pursuant to the terms of the Purchase Agreement, the Developer and the Company agreed that the Developer will make a monthly operating subsidy to AWWM that will cover any shortfall and recognize any additional future revenues the Company may receive for service.

The Company proposes to charge rates for water service pursuant to its existing May 14, 2009, Board approved residential water tariff. Water service will be metered according to current rates on file at the Board for the proposed franchise area which provides for a fixed service charge of \$27.00 per quarter for a 5/8 inch or 5/8 x 3/4 inch meter and a consumption charge of \$4.9889 per thousand gallons. Hydrant charges are \$57.98 per quarter per hydrant.

AWWM is not paying for any of the cost to construct the water system. The full cost of the system will be borne by the Developer and contributed to AWWM as a Contribution in Aid of Construction. The Developer will also be responsible for any capital improvements to the water system and will indemnify both AWWM and the Township if capital improvements are needed until full build-out of the system thus protecting AWWM's water customers from the associated rate impact. AWWM will be responsible for any ordinary repair and maintenance.

The Company will have title to the utility plant, however, the Developer will retain title to the real property on which the utility plant is situated. Easements granted to AWWM by the Developer will allow the Company to exercise the required activities to provide water service.

The proposed franchise area is located in Planning Area 5 – Environmentally Sensitive Planning Area or more specifically, within the Special State Planning Area - Highlands Planning Area. The Highlands Planning Area is that portion of the Highlands Region that is not included within the Highlands Preservation Area. Consistent with the State Plan and the Board's Main Extension Rules at 14:3-8.1 et seq., AWWM will not pay for, nor refund to the developers, any of the costs associated with extending service to the new service area as these costs will be fully borne by the developer.

By letter dated July 14, 2009, Rate Counsel submitted its comments to the petition and is not opposed to its approval. Rate Counsel recommends that any approval not include authorization to include in rate base the specific assets that will be acquired as a result of the petition since the inclusion into rate base of any asset and any associated ratemaking determination must be addressed in a future base rate proceeding. Rate Counsel further recommended the inclusion of specific language in any Board Order approving the petition, which is incorporated in this order.

AWWM provides potable water and wastewater service to customers in various communities located in eight counties throughout the State. Its employees are well qualified and possess the expertise to operate and maintain these systems and facilities so as to provide safe, adequate and proper service. This same level of service will be provided to the new service area. As a subsidiary of American Water Works, the Company has the financial stability and access to a wealth of utility related expertise and capital should the need arise.

Therefore, the Board **HEREBY FINDS** that the extension requested is necessary and proper for the public convenience and properly conserves the public interests, and **HEREBY APPROVES** the Township of Mount Olive Ordinance 42-2008 adopted on August 19, 2008, for the provision of water service in the Township of Mount Olive on Block 4400, Lots 79, 86 and 108, of the Mount Olive tax map as sought in the Company's petition. This approval is made with a concern to the particular circumstances presented in this matter as discussed below.

The municipal consent authorizes AWWM to own, operate and maintain a water supply system within the defined franchise area. Such authorization is terminable, i.e., expressly subject to the right of the Township to acquire the water supply system at some future date, at its sole discretion, without any obligation of the Township to pay AWWM compensation for the same or to assume any obligations of AWWM. Until such time as the Township exercises its right to acquire the water supply system, Toll Bros. Inc. is obligated to indemnify AWWM and the Township as to any and all capital expenditures ("Capital Cost Payments") required for the water supply system such that the capital costs are not borne by AWWM's customers. Moreover, Toll Bros. Inc. is obligated to make monthly operating subsidy payments ("Subsidy Payments") to AWWM until build out. Accordingly, because of the Township's right to revoke its authorization and to take over the water supply system, and due to Toll Bros. Inc.'s obligations to make Capital Cost Payments and Subsidy Payments, the Board **FURTHER FINDS** that the Company shall not be permitted to recover the amounts of the Capital Cost Payments and Subsidy Payments from ratepayers, should Toll Bros. Inc. fail to make such payments for any reason.

The Board **FURTHER APPROVES** the use of the existing Board approved General Metered Service tariff of Applied Wastewater Management for water service to be provided to the development. AWWM's current rates on file at the Board for the proposed franchise provide for a quarterly service charge of \$27.00 and a consumption charge of \$4.9889 per 1,000 gallons consumed. Hydrant charges will be \$57.98 per hydrant per quarter.

The approvals granted, hereinabove, shall be subject to the following provisions:

1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets now owned or hereafter to be owned by Applied Wastewater Management, Inc.
2. This Order shall not affect nor in any way limit the exercise of the authority of this Board or of this State in any future petition or in any proceedings with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or in any other matters affecting Applied Wastewater Management, Inc.
3. In an appropriate subsequent proceeding, the Company shall have the burden of demonstrating whether, and to what extent, any of the costs associated with this petition shall be allocated to ratepayers. Approval of this municipal consent does not include authorization to include in rate base the specific assets that are or will be completed as a result of the new service territory.

4. Approval of this municipal consent ordinance does not constitute Board approval of any costs or expenses associated with this petition. Any determination as to the appropriateness or reasonableness of the costs and expenses related to the franchise, including, but not limited to, cost of construction, contributions in aid of construction, depreciation on contributed plant, the cost of connection, or any related capital improvements, and the allocation of such cost and expenses, shall be made in an appropriate subsequent proceeding.

DATED: 9/21/09

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M. Fox

JEANNE M. FOX
PRESIDENT

Frederick F. Butler

FREDERICK F. BUTLER
COMMISSIONER

Joseph L. Fiordaliso

JOSEPH L. FIORDALISO
COMMISSIONER

Nicholas Asselta

NICHOLAS ASSELTA
COMMISSIONER

Elizabeth Randall

ELIZABETH RANDALL
COMMISSIONER

ATTEST:

Kristi Izzo

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities

Kristi Izzo

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OLIVE, MORRIS COUNTY; AND EXTENSION OF ITS EXISTING WATER TARIFF TO THE
NEW SERVICE AREA

BPU Docket No. WE09030185

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